IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

OP.No. 29374 of 2001(V)

PETITIONER:

P.C.NANU, S/O.KONIKKARA CHAMY,
UDAYANAGAR, AYYANTHOL DESOM,
THRISSUR TALUK, THRISSUR.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:
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1. **THE INDUSTRIAL TRIBUNAL,**
   PALAKKAD.

2. **VANAJA TEXTILES LIMITED,**
   REP.BY GENERAL MANAGER,
   SHRI.N.MUTHIAH, KURIYACHIRA P.O., THRISSUR.

BY ADV. SRI.M.P.ASHOK KUMAR
BY GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.47674/2001 IN OP. NO.29374/2001

DISMISSED

09.03.2007 **SD/- S.SIRI JAGAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD DT. 9.4.01 PASSED BY THE 1ST RESPONDENT.

/TRUE COPY/

tss

S. SIRI JAGAN, J.

O.P.NO. 29374 OF 2001

DATED THIS THE 9th DAY OF MARCH, 2007

JUDGMENT

The workman in I.D.No.153/99 on the files of Industrial Tribunal Palakkad is the petitioner herein. He is challenging Ext.P1 award passed by the Tribunal in that Industrial Department dispute.

2. The issue referred for adjudication was this:

> "Whether the dismissal of Sri. P.C. Nanu, Worker is justifiable, if not what relief he is entitled to get?"

3. The management raised a preliminary issue regarding the maintainability of the reference itself on the ground that the petitioner is not a workman coming within the definition of Section 2(s) of Industrial Disputes Act, as he is an employee in a supervisory capacity and is drawing monthly salary of more than Rs.5,000/-. This issue was considered by the Tribunal as a preliminary issue and the Tribunal entered finding in favour of the management to the effect that the petitioner is not a workman as defined under the Act. In the above circumstances, the tribunal passed an award holding that the reference order is not maintainable. The said Ext.P1 award of the tribunal is

under challenge at instance of the petitioner- workman.

4. The contention of the petitioner is that there was no reliable evidence before the Tribunal to come to the conclusion that the petitioner is exercising supervisory functions in the establishment of the management. According to him he was a workman only without having any supervisory functions whatsoever. Therefore he contends that the findings on fact entered by the tribunal is perverse and liable to be interfered with.

5. I have considered the rival contentions in detail. Admittedly, the petitioner was first appointed as a Shift Supervisor as per Ext.W1 appointment order dated 31.10.78. Later he was confirmed in the post of Supervisor, he got promotion to the post of Asst. Spinning Master as per Ext.W3 memo and he was again promoted to the post of Deputy Spinning Master as per Ext.M1 letter dated 30.7.94. At the time of dismissal from service he was working as a Deputy Spinning Master. Ext.M1 document specifically stipulated that the petitioner would be responsible for production, waste control, quality and labour control. While giving evidence as WW1, the petitioner specifically admitted that he was appointed as a Supervisor and that at the time of dismissal, he was working as a deputy Spinning Master. He also admitted that his duties were to look after production, quality and waste control. He had qualification of Diploma in Textile Technology. He also admitted

that he occasionally used to give technical advice to the workmen and that he used to teach apprentices. However, in cross examination he tried to set up a case that he was only a worker supervisor, Worker Deputy Spinning Master etc. He also got another workman examined as WW2 to depose to the effect that the petitioner was doing some technical and clerical work. Apart from that his answers to most of the questions in cross examination was that he did not know. The management witness No.1, who was the General Manger of the management -mill gave evidence to the effect that the highest post in the Spinning Department of the management establishment is that of the Spinning Master. Since there was no Spinning Masters since 1995, the petitioner who was the Deputy spinning Master had been doing the duties of the Spinning Master. He further stated that there were 5 Asst. Spinning Masters under the Deputy Spinning Master and 6 Supervisors under the Asst. Spinning Master. The evidence of MW1 was to the effect that the Deputy Spinning Master was shift-in-charge and in that capacity he had to supervise all the works upto packing and it was his duty to engage casual workers in the place of absentee regular workers and disburse their wages at the end of each shift. MW1 deposed that the petitioner was competent to grant leave to other workers and he had actually exercised this power as borne out from Ext.M13 series leave applications. Ext.MW2 the the personal

Manager also deposed to the effect that the petitioner had written the word 'granted' and initialed in Ext.M13 series. He also had signed M2 series of attendance register. On these evidence, the tribunal came to the conclusion that the petitioner had been performing the duties of shift-in-charge including granting of leave as deposed by MW1. Resultantly the tribunal held that the petitioner is not a workman as defined in Section 25 of the Industrial Disputes Act.

6. On consideration of the award of the Industrial Tribunal and the appreciation of evidence as detailed above, I am perfectly satisfied that there is absolutely no scope for even suggesting that the findings of facts entered by the Tribunal is in any way perverse, which finding alone would give me jurisdiction to interfere with Ext.P1 under Article 226 of the Constitution of India.

In the above circumstances, I do not find any merit whatsoever in the original petition and accordingly the same is dismissed.

S. SIRI JAGAN, JUDGE

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